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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,225	09/19/2003	Joseph J. Estwanik	051586/310309	7016
826	7590	03/19/2007		
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER AMERSON, LORI BAKER	
			ART UNIT 3764	PAPER NUMBER
			MAIL DATE 03/19/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

## Office Action Summary

Application No.

10/667,225

Applicant(s)

ESTWANIK, JOSEPH J.

Examiner

L. Amerson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14, 15 and 19 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-9, 11-13, 16 and 18 is/are rejected.
- 7) ☒ Claim(s) 4, 10 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Response to Amendment***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- a. Claims 1-2, 5-8, 11-13, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metzger in view of Hoff. Metzger discloses an apparatus comprising a rocker device (figure 1) having a pair of lower rocking surfaces 22 that are arcuately shaped with a constant radius (figure 2) having an upper platform surface 10, 12, 14, having a cushioned recess (figure 3) and capable for receiving a user's knee in bent condition for stretching. Metzger is also capable of performing the method comprising the steps of resting the lower surface on a flat surface, placing a knee in the recess and rocking backward and forward. Metzger discloses all of the limitations of the claimed invention except for the angularly converging surfaces attached at an angle of approximately 90 degrees to one another. Thus, in an analogous art, Hoff teaches a device having two angularly converging surfaces attached at an angle of approximately 90 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to converge the surfaces angularly at an angle of at

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least 90 degrees to prevent hyperextending the knee which causes injury or hyperflexing the spine.

b. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metzger and Hoff in view of Parker. Metzger and Hoff disclose all of the limitations of the claimed invention except for the handle. Thus, in an analogous art, Parker teaches a device having a handle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Metzger in view of Parker such that a handle allows for transport of a device by a user.

***Allowable Subject Matter***


3. Claims 4, 10 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 14-15 and 19 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon-Tue, Thur-Fri. Interviews Tue. and Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
LORI AMERSON  
PRIMARY EXAMINER